

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEROY GOMEZ,

Petitioner,

v.

UNKNOWN,

Respondent.

Case No. 1:20-cv-00346-NONE-JDP

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
PETITION FOR LACK OF JURISDICTION

(Doc. No. 10)

Petitioner Leroy Gomez, a pretrial detainee facing criminal prosecution in state court, proceeding without counsel here, has petitioned this court for a writ of mandamus directing the Kern County Superior Court to review his claim of vindictive prosecution against the prosecutor who handled his preliminary hearing in state court. (Doc. No. 1.) This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On May 18, 2020, the assigned magistrate judge issued findings and recommendations construing the petition as a motion for a writ of mandamus brought under the All Writs Act, 28 U.S.C. § 1651, and recommending that the petition be dismissed for lack of jurisdiction because, generally, a federal court cannot issue a writ of mandamus commanding action by a state or its agencies. (Doc. No. 10.) The magistrate judge also recommended denying a certificate of appealability. (*Id.*) The findings and recommendations were served on petitioner and contained notice that

1 objections thereto were due within 14 days of service. (*Id.*) Petitioner did not file any objections
2 and the time to do so has passed.

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
4 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
5 court concludes that the findings and recommendations are supported by the record and proper
6 analysis.

7 Accordingly:

- 8 1. The findings and recommendations issued on May 18, 2020 (Doc. No. 10) are adopted in
9 full;
- 10 2. The petition for writ of mandamus (Doc. No. 1) is dismissed;
- 11 3. No certificate of appealability will issue; and
- 12 4. The Clerk of Court is directed to assign a district judge to this case for the purposes of
13 closure and to close this case.

14 IT IS SO ORDERED.

15 Dated: **July 16, 2020**

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18 UNITED STATES DISTRICT JUDGE
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